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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 THOMAS E. PEREZ, Secretary of Labor,)	
United States Department of Labor,)	Case No.
)	
12 Plaintiff,)	
)	
13 v.)	
)	
14 LOCAL 872, LABORERS INTERNATIONAL)	
15 UNION OF NORTH AMERICA,)	
)	
16 Defendant.)	

17
18 **COMPLAINT**

19 Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor,
20 alleges as follows:

21 1. This action is brought under Title IV of the Labor-Management Reporting and
22 Disclosure Act of 1959, 29 U.S.C. §§ 481-484 (the "Act"), for a judgment declaring that the
23 election of union officers completed on April 18, 2015 and conducted by Local 872, Laborers
24 International Union of North America (Defendant) for the office of Vice President, is void, and
25 directing Defendant to conduct a new election for that office under Plaintiff's supervision, and
26 for other appropriate relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 482(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

3. Venue lies in the district pursuant to 29 U.S.C. § 482(b), and 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Thomas E. Perez is the duly appointed Secretary of Labor, United States Department of Labor. Plaintiff is authorized to bring this action under section 402(b) of Title IV of the Act, 29 U.S.C. § 482(b).

5. Defendant is, and at all times relevant to this action has been, an unincorporated association residing in Las Vegas, Nevada, within the jurisdiction of this district.

FACTUAL ALLEGATIONS

6. Defendant is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the Act. 29 U.S.C. §§ 402(i), 402(j) and 481(b).

7. Defendant, purporting to act pursuant to its Constitution, conducted an election of officers that was completed on April 18, 2015, and this election was subject to the provisions of Title IV of the Act, 29 U.S.C. §§ 481-484.

8. By letter mailed April 18, 2015, Complainant John Stevens filed an election protest with the International Executive Board of Defendant's parent body, the Laborers International Union of North America (LIUNA). By letter dated June 19, 2015, International President Terry O'Sullivan denied Stevens' protest. Stevens received the International's June 19, 2015 decision on or around July 13, 2015. By email of June 26, 2015, to the International President, Stevens inquired concerning union remedies available to him. By letter dated July 14, 2015, International President stated that his June 19, 2015 letter "is considered a final and binding determination. However, you have the right to appeal to the Convention of the International Union, pursuant to Article VIII, Section 2, subsection (a-viii) of the International

1 Union Constitution, if you choose to do so.” By letter dated July 16, 2015, Stevens appealed to
2 the International Convention. No Convention is scheduled for 2015.

3 9. Having obtained LIUNA’s June 19, 2015 final decision on or around July 13,
4 2015, Stevens, in compliance with section 402(a)(1) of the Act, 29 U.S.C. § 482(a)(1), filed a
5 timely complaint within one calendar month thereafter with the Department of Labor, which was
6 received on July 20, 2015.

7 10. In the event that Stevens’ appeal to the convention would be considered to affect
8 the finality of the union’s June 19, 2015 decision, Stevens met the alternative exhaustion
9 requirement under section 402(a)(2) of the Act, 29 U.S.C. § 482(a)(2). Having invoked the
10 remedies available for three calendar months from April 18, 2015, without receiving a final
11 decision after invocation, i.e., not considering the June 19, 2015 decision as final, Stevens filed a
12 timely complaint within one calendar month of the expiration of three months from filing his
13 protest with the union.

14 11. By letter signed September 25, 2015, Defendant agreed that the time within which
15 Plaintiff may bring suit with respect to Defendant’s aforesaid election be extended to October 13,
16 2015. *See* Exhibit 1.

17 12. Pursuant to section 601 of the Act, 29 U.S.C. § 521, and in accordance with
18 section 402(b) of the Act, 29 U.S.C. § 482(b), Plaintiff investigated the complaint and, as a result
19 of the facts shown by his investigation, found probable cause to believe that: (1) violations of
20 Title IV of the Act (29 U.S.C. §§ 481-484) had occurred in the conduct of Defendant’s election
21 of union officers completed on April 18, 2015; and (2) that such violations had not been
22 remedied at the time of the institution of this action.

23 13. Article V of the LIUNA Constitution sets forth the eligibility qualifications for
24 office. In order to qualify as a candidate for any office in a local, a member “(s)hall be a lawful
25 permanent resident and shall be lawfully employable under the laws of the United States or
26 Canada.” *See* Exhibit 2, a true and accurate copy of the LIUNA Constitution, at Article V,

1 Section 2.

2 14. The International provides a resource guide to interpret its Constitution's election
3 procedures entitled "The Local Union Officer Elections, A Guide for Local Union Judges of
4 Election, February 2013" (Election Guide). The Election Guide provides that the residency
5 qualification may be established by presenting one of the following: 1) Birth Certificate . . . ;
6 2) U.S. Passport . . . ; 3) Alien Registration Receipt Card with photograph (green card); 4) A
7 certificate of naturalization; or, 5) such other documentation as the [Election] Judges may deem
8 appropriate. *See* Exhibit 3, a true and accurate copy of the Election Guide, at 16.

9 15. Article V, section 3, of the International Constitution, requires that a candidate for
10 union office "(s)hall be literate." Ex. 2.

11 16. The Election Guide sets out the constitutional requirement for literacy without
12 explanation. Ex. 3 at p. 16, 1(d).

13 17. The Election Guide includes as an Appendix, a Sample Candidacy Questionnaire
14 that provides a check list of all candidacy qualifications. Ex. 3, Appendix C, pages C-1 and C-2.
15 The questions include whether the nominee meets the union's candidacy requirements, such as
16 whether the nominee can demonstrate permanent legal residency and whether the nominee can
17 "read and write basic English." *Id.* Defendant adopted the Sample Candidacy Questionnaire
18 without any substantive modifications.

19 18. Defendant held a nominations meeting for the election of officers on April 18,
20 2015, in the union's hall.

21 19. At the nominations meeting, Martin Trujillo was nominated as a candidate for
22 Vice President.

23 20. Immediately after the close of nominations at the union hall, all candidates were
24 required to complete, date, and sign the candidacy questionnaire to establish their eligibility to
25 run for office. Election judges interviewed each candidate to ensure compliance with candidacy
26 qualifications, signed, and dated each questionnaire at the conclusion of the interview process,

1 indicating whether the candidate was either qualified or not qualified. If not qualified, the
2 election judge was required to state the basis of the disqualification.

3 21. In filling out his questionnaire, Trujillo answered in the affirmative that he could
4 read and write basic English and that he was able to present a Green Card or a Naturalization
5 Card to establish his legal residency. Trujillo was a shop steward, appointed by Defendant five
6 years earlier and steadily employed for a number of years by Hardstone Construction, a covered
7 employer.

8 22. Defendant's head election judge required Trujillo to read aloud a provision of the
9 union's Constitution to determine whether Trujillo was literate. No other candidate was required
10 to read aloud to assess his literacy.

11 23. Neither Defendant nor LIUNA has standardized, objective criteria for assessing
12 literacy.

13 24. Defendant's head election judge indicated on Trujillo's candidacy questionnaire
14 that he was disqualified to run for office because he was not literate.

15 25. Trujillo's candidacy questionnaire indicated that he was working for Hardstone
16 Construction from February 24, 2010 to the current date, which was April 18, 2015.

17 26. Trujillo did not have his Green Card or Certificate of Naturalization with him at
18 the meeting and presented his California driver's license as proof of residence, which the
19 election judge initially accepted.

20 27. After conferring with incumbent Secretary Treasurer, the head election judge
21 rejected Trujillo's driver's license and directed Trujillo to go home and retrieve his birth
22 certificate. Defendant's head election judge had announced he would be at the union hall until 5
23 p.m. that day, April 18, 2015. At approximately 11:30 a.m., Trujillo left the union hall to retrieve
24 his birth certificate. Approximately ten minutes later, while Trujillo was going to his home,
25 Defendant's head election judge announced that Trujillo was disqualified for failing to provide
26 proof of legal residency.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment:

A. Declaring Defendant's election for the office of Vice President to be void;

B. Directing Defendant to conduct a new election for the office of Vice President under the supervision of Plaintiff;

C. For the costs of this action; and

D. For such other relief as may be appropriate.

Respectfully submitted this 13th day of October 2015.

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